

1 WILLIAM J. GOINES (SBN: 61290)  
goinesw@gtlaw.com  
2 AMANDA D. DONSON (SBN: 300022)  
donsona@gtlaw.com  
3 GREENBERG TRAURIG, LLP  
1900 University Avenue, Fifth Floor  
4 East Palo Alto, California 94303  
Telephone: (650) 328-8500  
5 Facsimile: (650) 328-8508

6 Attorneys for Defendants  
Liquid Capital Exchange, Inc., BDB Capital, Inc.  
7 (d/b/a Liquid Capital of Colorado)(erroneously sued  
as Liquid Capital of Colorado), Sol Roter, an  
8 Individual, and Bruce Dawson, an Individual

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

13 MARBLE BRIDGE FUNDING GROUP, INC.,

14 Plaintiff,

15 v.

16 LIQUID CAPITAL EXCHANGE, INC., LIQUID  
17 CAPITAL OF COLORADO, SOL ROTER, AN  
INDIVIDUAL, AND BRUCE DAWSON, AN  
INDIVIDUAL,

18 Defendants.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CV15-00177-YGR

**NOTICE OF MOTION AND MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND MOTION TO  
QUASH SERVICE OF PROCESS;  
MEMORANDUM OF POINT AND  
AUTHORITIES**

Date: March 10, 2015  
Time: 2:00 p.m.  
Dept.: Courtroom 1, 4<sup>th</sup> Floor  
Judge: Hon. Yvonne Rogers

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	2
II. STATEMENT OF ISSUES .....	3
III. BRIEF STATEMENT OF FACTS .....	3
IV. ARGUMENT .....	3
A. Roter, Dawson and BDB Capital Lack Sufficient Contacts with California to be Subject to General Jurisdiction .....	4
B. There Is No Specific Jurisdiction Over Roter, Dawson and BDB Capital .....	6
1. Roter, Dawson and BDB Capital Have Not Purposefully Directed Their Activities in California Nor Purposefully Availed Themselves of Conducting Activities in California .....	6
2. Plaintiff's Claims Against Roter, Dawson and BDB Capital Did Not Arise from California-Related Activities .....	8
3. The Exercise of Jurisdiction Over Roter, Dawson and BDB Capital Would Be Unreasonable .....	8
(a) Extent of Roter, Dawson and BDB Capital's Purposeful Interjection into California .....	9
(b) The Burden Upon Roter, Dawson and BDB Capital Defending in California .....	9
(c) The Extent of the Conflict with a Foreign Sovereign .....	10
(d) California's Interest in Adjudicating the Dispute .....	10
(e) The Most Efficient Judicial Resolution of the Controversy .....	11
(f) The Availability of an Alternative Forum .....	11
(g) The Importance of California to Plaintiff's Interest in Convenient and Effective Relief .....	11
C. Mr. Roter Has Not Been Properly Served Under the Hague Convention .....	12
V. CONCLUSION .....	12

## TABLE OF AUTHORITIES

	<u>Page</u>
<b>Federal Cases</b>	
<i>Asahi Metal Industry Co. v. Superior Court</i> , 480 U.S. 102 (1987).....	9, 10
<i>Bancroft &amp; Masters, Inc. v. Augusta Nat. Inc.</i> , 223 F.3d 1082 (9th Cir. 2000) .....	5, 7, 8, 9
<i>BBK Tobacco &amp; Foods LLP v. Juicy eJuice</i> , No. CV-13-00070-PHX-GMS, 2014 WL 1686842 (D. Ariz. April 29, 2014) .....	12
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	7, 9
<i>Calder v. Jones</i> , 465 U.S. 783 (1984).....	7
<i>Core-Vent Corp. v. Nobel Indus. AB</i> , 11 F.3d 1482 (9th Cir. 1993) .....	9, 10, 11
<i>Data Disc, Inc. v. Systems Tech. Assocs.</i> , 557 F.2d 1280 (9th Cir. 1977) .....	4
<i>Davis v. Metro Productions, Inc.</i> , 885 F.2d 515 (9th Cir. 1989) .....	5
<i>Fireman's Fund Ins. Co. v. National Bank of Cooperatives</i> , 103 F.3d 888 (9th Cir. 1996) .....	4
<i>Gordy v. Daily News L.P.</i> , 95 F.3d 829 (9th Cir. 1996) .....	10
<i>Gray &amp; Co. v. Firstenberg Machinery Co., Inc.</i> , 913 F.2d 758 (9th Cir. 1990) .....	8
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408 (1984).....	4
<i>Insurance Co. of N. Am. v. Marina Santa Cruz</i> , 649 F.2d 1266 (9th Cir. 1981) .....	9
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945).....	4
<i>McNutt v. General Motors Acceptance Corp. of Indiana</i> , 298 U.S. 178 (1936).....	3
<i>Mississippi Publ'g Corp. v. Murphree</i> , 326 U.S. 438 (1946).....	12
<i>Omni Capital Int'l Ltd. v. Rudol Wolff &amp; Co., Ltd.</i> , 484 U.S. 97 (1987).....	12
<i>Panavision Int'l L.P. v. Toeppen</i> , 141 F.3d 1316 (9th Cir. 1998) .....	8
<i>Pebble Beach Co. v. Caddy</i> , 453 F.3d 1151 (9th Cir. 2006) .....	5

1	<i>Reebok Int'l Ltd. v. McLaughlin</i> , 49 F.3d 1387 (9th Cir. 1995) .....	6
2	<i>Rocke v. Canadian Auto. Sport Club</i> , 660 F.2d 395 (9th Cir. 1981) .....	10
3	<i>Roth v. Garcia Marquez</i> , 942 F.2d 617 (9th Cir. 1991) .....	11
4	<i>Schwarzenegger v. Ford Martin Motor Co.</i> , 374 F.3d 797 (9th Cir. 2004) .....	7
5	<i>Sher v. Johnson</i> , 911 F.2d 1357 (9th Cir. 1990) .....	4
6	<i>Sinatra v. National Enquirer, Inc.</i> , 854 F.2d 1191 (9th Cir. 1988) .....	11
7	<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) .....	4
8	<i>Ziegler v. Indian River County</i> , 64 F.3d 470 (9th Cir. 1995) .....	3
9		
10	<b>State Statutes</b>	
11	Cal. Civ. Proc. Code § 410.10 .....	4
12		
13	<b>Federal Rules</b>	
14	Federal Rule of Civil Procedure 4 .....	12
15	Federal Rule of Civil Procedure 4(f) .....	12
16	Federal Rule of Civil Procedure 12(b)(2), (4) and (5) .....	3
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1           **TO PLAINTIFF AND TO ITS ATTORNEY OF RECORD:**

2           NOTICE IS HEREBY GIVEN that on March 10, 2015, at the hour of 2:00 p.m., or as soon as the  
3 matter may be heard in Courtroom 1, 4th Floor of the United States District Court located at 1301 Clay  
4 Street, Oakland, California, Defendants BDB Capital, Inc. (d/b/a Liquid Capital of  
5 Colorado)(erroneously sued as Liquid Capital of Colorado), Bruce Dawson and Sol Roter will move this  
6 court for an order (1) dismissing the Complaint against defendants Dawson, BDB Capital and Roter for  
7 lack of personal jurisdiction; and (2) quashing service of process upon Mr. Roter.

8           This motion is made on the grounds that defendants, Dawson and BDB Capital, as citizens of  
9 Colorado, and Roter, as a citizen of Canada, are not subject to the personal jurisdiction of California.  
10 Further, the service of process that Plaintiff claims to have effected upon Mr. Roter is insufficient under  
11 the Hague Convention.

12           This motion will be based on this notice and the accompanying Memorandum of Points and  
13 Authorities and Declarations of Sol Roter and Bruce Dawson filed concurrently herewith, and on such  
14 other and further argument and evidence which may be presented at the hearing on this motion.

15  
16 DATED: January 20, 2015

GREENBERG TRAURIG, LLP

17  
18 By /s/ William J. Goines

William J. Goines

Amanda D. Donson

19  
20 Attorneys for Defendants Liquid Capital Exchange, Inc.,  
21 BDB Capital, Inc. (d/b/a Liquid Capital of  
22 Colorado)(erroneously sued as Liquid Capital of Colorado),  
23 Sol Roter, an Individual, and Bruce Dawson, an Individual  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
84

## I. INTRODUCTION

Plaintiff Marble Bridge Funding Group, Inc., a citizen of California, filed this lawsuit against Defendants BDB Capital, Inc. (d/b/a Liquid Capital of Colorado) (erroneously sued as Liquid Capital of Colorado) (“BDB Capital”), a citizen of Colorado; Bruce Dawson (“Dawson”), a citizen of Colorado and Sol Roter (“Roter”), a citizen of Canada. Plaintiff’s Complaint purports to allege claims for (i) Aiding and Abetting Fraud, (ii) Fraud and Deceit – Intentional Misrepresentation, and (iii) Fraud and Deceit – Fraudulent Concealment. These purported claims stem from Plaintiff’s payment to Liquid Capital Exchange, Inc. (“Exchange”) of \$270,000.00 in exchange for Exchange terminating its financing arrangements and security interest with Nature’s Own Pharmacy, LLC, improperly identified in paragraph 25 of the complaint as “Nature’s Own”. A copy of the agreement between Exchange and Plaintiff (the “Buyout Agreement”) is attached as **Exhibit A**.

The jurisdictional allegations contained in the Complaint conclusorily state:

[a] substantial part of the events or omissions giving rise to the claims asserted herein took place in Contra Costa County. Plaintiff and Defendants, Liquid Capital Exchange and Liquid Capital of Colorado, entered into a contract executed in Contra Costa County.

Compl. ¶ 10.<sup>1</sup> The Complaint further alleges broadly that Dawson, Roter and BDB Capital's conduct giving rise to the Complaint occurred in Contra Costa County, California, and that Messrs. Roter and Dawson do business in California. Compl. ¶¶ 3-5.

These allegations are wholly insufficient to permit this Court to exercise personal jurisdiction over Roter, Dawson and BDB Capital. The accompanying declarations from Messrs. Roter and Dawson individually and on behalf of BDB Capital, demonstrate these non-resident defendants (i) do not have “minimum contacts” with California; and (ii) they have not conducted any activity within the State of California that would justify subjecting them to personal jurisdiction in this State. Further, Plaintiff has failed to comply with the Hague Convention’s requirements for service of process upon Mr. Roter. Thus, service should be quashed.

<sup>1</sup> Notably, Plaintiff fails to attach to the complaint a copy of the alleged contract, which gives rise to Plaintiff's alleged claims.

1 **II. STATEMENT OF ISSUES**

2 Pursuant to Federal Rule of Civil Procedure 12(b)(2), (4) and (5), defendants Roter, Dawson and  
3 BDB Capital respectfully request this Court issue an order (i) dismissing the Complaint filed against each  
4 of them on the grounds that the Court lacks personal jurisdiction over them and (ii) quashing the service  
5 of process Plaintiff claims to have effected upon Mr. Roter.

6 **III. BRIEF STATEMENT OF FACTS**

7 BDB Capital is incorporated in and has its principal place of business in the state of  
8 Colorado. BDB Capital does not conduct business in California. *See* Dawson Decl. ¶¶ 17, 19.

9 Defendant Dawson is the President of BDB Capital. Mr. Dawson resides in and is a citizen of  
10 Colorado. Dawson Decl. ¶ 1. Mr. Dawson does not personally conduct business in California, nor does  
11 he own any real or personal property in California. *See* Dawson Decl. ¶¶ 2, 4, 9.

12 Defendant Roter is the President of Defendant Exchange, Inc. Mr. Roter resides in and is a citizen  
13 of Canada. Roter Decl. ¶ 1. Mr. Roter does not personally conduct business in California, nor does he  
14 own any real or personal property in California. *See* Roter Decl. ¶¶ 2, 4, 9.

15 In its Complaint, Plaintiff broadly alleges Roter, Dawson, BDB Capital and Exchange  
16 participated in a fraudulent scheme whereby Plaintiff was induced by the defendants' alleged  
17 misrepresentations and omissions to purchase the invoices of a fraudulent company, Nature's Own.<sup>2</sup> *See*  
18 Compl. ¶¶ 18, 19. Plaintiff conclusorily and generally alleges the events giving rise to its alleged claims  
19 occurred in Contra Costa County, California, despite the fact that Roter, Dawson and BDB Capital do not  
20 have contacts with California. *See* Compl. ¶ 10. Finally, and notably, Plaintiff initiated contact with  
21 Exchange about entering into a Buyout Agreement. *See* Roter Decl. ¶ 14.

22 **IV. ARGUMENT**

23 It is well established that the plaintiff has the burden of establishing jurisdiction. *See, e.g., Ziegler*  
24 *v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995). "[I]f plaintiff's allegations of jurisdictional  
25 facts are challenged by his adversary in any appropriate manner, he must support them by competent  
26 proof." *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936).

27 <sup>2</sup> Dawson, Roter and BDB re-state Plaintiff's allegations for the purposes of this motion to dismiss, but  
28 deny the allegations of the Complaint, and further deny that they are liable to Plaintiff.

1 In a diversity action, a United States district court may exercise personal jurisdiction over a  
2 nonresident defendant if jurisdiction is proper under the applicable state's long-arm statute and if that  
3 exercise accords with federal constitutional principles of due process. *See, e.g., Fireman's Fund Ins. Co.*  
4 *v. National Bank of Cooperatives*, 103 F.3d 888, 893 (9th Cir. 1996). California's long-arm statute  
5 provides that jurisdiction may be exercised "on any basis not inconsistent with the Constitution of this  
6 state or of the United States." Cal. Civ. Proc. Code § 410.10. Accordingly, personal jurisdiction in  
7 California is "coextensive with the outer limits of due process under the state and federal constitutions, as  
8 those limits have been defined by the United States Supreme Court." *Data Disc, Inc. v. Systems Tech.*  
9 *Assocs.*, 557 F.2d 1280, 1286 (9th Cir. 1977).

10 Due process under the U.S. Constitution requires that a nonresident defendant have "minimum  
11 contacts" with the forum state so that maintaining a suit against the defendant does not offend "traditional  
12 notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316  
13 (1945). Stated another way, the issue is whether the "defendant's conduct and connection with the forum  
14 State are such that he should reasonably anticipate being hailed into court there." *World-Wide*  
15 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

16 There are two types of personal jurisdiction: specific and general. *See Helicopteros Nacionales*  
17 *de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984). A court may exercise general jurisdiction  
18 where the nonresident defendant's activities are "substantial or continuous and systematic, even if the  
19 cause of action is unrelated to those activities." *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). If  
20 the nature of the defendant's contacts make exercise of general jurisdiction inappropriate, a court may  
21 nonetheless exercise specific jurisdiction if the contacts with the forum state are sufficient in relation to  
22 the cause of action for which the defendant is being sued. *See id.*

23  
24 **A. Roter, Dawson and BDB Capital Lack Sufficient Contacts with California to be**  
**Subject to General Jurisdiction**

25 Roter, Dawson and BDB Capital are not subject to general jurisdiction in California because,  
26 despite Plaintiff's conclusory allegations, Roter, Dawson and BDB Capital have not conducted  
27 substantial continuous nor systematic activities within California. *See Roter Decl.* ¶¶ 2, 4-10; *See*  
28 *Dawson Decl.* ¶¶ 2, 4-10, 17-19, 21-27. "The standard for establishing general jurisdiction is fairly high



1 and requires that the defendant's contacts be of the sort that approximate physical presence." *Bancroft &*  
2 *Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (internal citations omitted). The  
3 factors to consider for general jurisdiction include "whether the defendant makes sales, solicits or  
4 engages in business in the state, serves the state's markets, designates an agent for service of process,  
5 holds a license, or is incorporated there." *Bancroft*, 223 F.3d at 1086.

6 Defendant BDB Capital has no contacts with California. BDB Capital is incorporated under the  
7 laws of the State of Colorado and has its principal place of business in Colorado. Dawson Decl. ¶ 17.  
8 Notably, Plaintiff does not and cannot allege that BDB Capital does business in California. See Compl. ¶  
9 3. BDB Capital does not make sales, hold any California issues licenses, solicit or engage in business in  
10 California, serve California's markets, nor has it designated an agent for service of process, and is not  
11 incorporated here. Dawson Decl. ¶¶ 18-20. BDB Capital does not (i) own property in California, (ii)  
12 have employees within California, (iii) maintain offices within California, (iv) have a telephone number  
13 within California, or (v) have bank accounts within California. Dawson Decl. ¶¶ 21, 23, 24, 26. BDB  
14 Capital does maintain a "passive" website that is accessible in California, with which visitors can send an  
15 inquiry via e-mail. Dawson Decl. ¶ 30. However, maintenance of a passive website does not subject  
16 BDB Capital to personal jurisdiction in California. See *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1153  
17 (9th Cir. 2006) (British operator of bed and breakfast was not subject to personal jurisdiction based solely  
18 on its passive website, which had an on-line inquiry form). Thus, BDB Capital is not subject to the  
19 general jurisdiction of this Court.

20 Similarly, defendants Roter and Dawson do not have any contacts with California that would  
21 subject them to general jurisdiction in this state. To the extent Plaintiff argues Roter should be subject to  
22 jurisdiction in California as an officer of Exchange, a Delaware corporation registered to do business in  
23 California, that argument should be rejected. Roter's position as president of Liquid Capital does not  
24 subject him to personal jurisdiction in California. See *Davis v. Metro Productions, Inc.*, 885 F.2d 515, 520  
25 (9<sup>th</sup> Cir. 1989) (an employee's contacts with a forum are not to be judged according to the employer's  
26 activities there; rather, each defendant's contacts with the forum state must be assessed individually).

27 Moreover, neither Roter nor Dawson are residents of California. Roter Decl. ¶ 2; Dawson Decl. ¶  
28 2. Roter resides in and is a citizen of Canada. Roter Decl. ¶ 1. Dawson resides in and is a citizen of

1 Colorado. Dawson Decl. ¶ 1. Although Plaintiff alleges Messrs. Roter and Dawson do business in  
2 California, neither Mr. Roter nor Mr. Dawson make sales, or solicit or engage in business in California.  
3 Further, Messrs. Roter and Dawson do not serve California's markets, have not designated an agent for  
4 service of process, nor hold any California issued licenses. Roter Decl. ¶¶ 3-4; Dawson Decl. ¶¶ 3-4.  
5 Neither Roter nor Dawson own real or personal property in California, have employees within California,  
6 maintain offices within California, have a telephone number within California, or have bank accounts  
7 within California. Roter Decl. ¶¶ 2, 6, 7, 9; Dawson Decl. ¶¶ 2, 6, 7, 9.

8 Given the foregoing facts and authorities, Plaintiff cannot meet the high standard for establishing  
9 general jurisdiction over any of Roter, Dawson and BDB Capital. Roter, Dawson and BDB Capital's  
10 contacts with California are neither substantial nor continuous and systematic such that they would  
11 approximate physical presence.

12 **B. There Is No Specific Jurisdiction Over Roter, Dawson and BDB Capital**

13 Roter, Dawson and BDB Capital also do not have sufficient contact with the State of California to  
14 subject them to specific jurisdiction related to the causes of action in the Complaint. Specific jurisdiction  
15 requires:

16 (1) The nonresident defendant must purposefully direct his activities or consummate  
17 some transaction with the forum or resident thereof; or perform some act by which he  
18 purposefully avails himself of the privilege of conducting activities in the forum, thereby  
19 invoking the benefits and protection of its laws;

20 (2) the claim must be one which arises out of or relates to the defendant's forum-related  
21 activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it  
must be reasonable.

22 *Reebok Int'l Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995) (citation omitted). In this case,  
23 because there are no facts sufficient to support a finding that any of these factors have been met, specific  
24 jurisdiction over Roter, Dawson and BDB Capital may not be exercised.

25 1. **Roter, Dawson and BDB Capital Have Not Purposefully Directed Their**  
26 **Activities in California Nor Purposefully Availed Themselves of Conducting**  
27 **Activities in California**

28 Plaintiff fails to adequately allege Roter, Dawson and BDB Capital purposefully availed themselves of  
the privilege of conducting business in California. The "purposeful availment requirement ensures that a

1 defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts....”  
2 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotations omitted). Plaintiff must show  
3 “purposeful direction,” defined by the “three-part ‘effects’ test traceable to the Supreme Court’s decision in  
4 *Calder v. Jones*, 465 U.S. 783 (1984).” *Schwarzenegger v. Ford Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir.  
5 2004). The defendant must have 1) committed an intentional act, 2) expressly aimed at the forum state, which  
6 3) causes harm that the defendant knew was likely to be suffered in the forum state. *Id.*

7 Plaintiff has failed to show Roter, Dawson and BDB Capital “expressly aimed” any actions at  
8 California and that the brunt of any harm was suffered by Plaintiff, as purportedly anticipated by Roter,  
9 Dawson and BDB Capital in California. The “express aiming” requirement of *Calder* is satisfied “when  
10 the defendant is alleged to have engaged in wrongful conduct *targeted* at a plaintiff whom the defendant  
11 knows to be a resident of the forum state.” *Bancroft*, 223 F.3d at 1087 (emphasis added). Here, it is  
12 Plaintiff who reached out to Exchange about the transaction involving Nature’s Own, not the other way  
13 around. Roter Decl. ¶ 14. Therefore, Plaintiff cannot claim that Roter, Dawson or BDB Capital targeted  
14 their actions to Plaintiff.

15 Plaintiff’s conclusory and unsupported allegations are also insufficient to subject Roter, Dawson  
16 and BDB Capital to personal jurisdiction in California. Plaintiff broadly alleges that “[a] substantial part  
17 of the events or omissions giving rise to the claims asserted herein took place in Contra Costa County.  
18 Plaintiff and ... Liquid Capital of Colorado, entered into a contract executed in Contra Costa County.”  
19 Compl. ¶ 10.<sup>3</sup> Plaintiff broadly alleges that it relied on the defendants’ alleged misrepresentations and  
20 omissions in purchasing the invoices of Nature’s Own from Exchange. Compl. ¶¶ 13-29. However,  
21 Plaintiff does not provide any foundational facts, such as when or where any alleged misrepresentations  
22 occurred in Contra Costa County. Setting aside whether any of the defendants engaged in any wrongful  
23 conduct, which they did not, Plaintiff does not allege any of the defendants, and specifically Roter,  
24 Dawson and BDB Capital, even knew Plaintiff was a California resident.

25 Further, to the extent Plaintiff relies on its allegation that the contract was executed in Contra  
26 Costa County, this allegation alone is insufficient. “A contract alone does not automatically establish the

27 <sup>3</sup> Contrary to Plaintiff’s allegation, BDB Capital never executed any contracts with Plaintiff. Dawson  
28 Decl. ¶ 19. *See also* Buyout Agreement.

1 requisite minimum contacts necessary for the exercise of personal jurisdiction.” *Gray & Co. v.*  
2 *Firstenberg Machinery Co., Inc.*, 913 F.2d 758, 760 (9<sup>th</sup> Cir. 1990). “[P]rior negotiations and  
3 contemplated future consequences, along with the terms of the contract and the parties’ actual course of  
4 dealing are the factors to be considered.” *Id.* Plaintiff does not, and cannot, show that any of these  
5 factors should subject Roter, Dawson and BDB Capital to personal jurisdiction in California. Any of the  
6 limited negotiations that occurred prior to the execution of the Buyout Agreement were between  
7 Exchange and Plaintiff and did not take place in California. Roter Decl. ¶ 14. Roter, Dawson and BDB  
8 Capital could not have contemplated future consequences in California because they were not parties to  
9 the negotiations or the Buyout Agreement. *See* Buyout Agreement. Moreover, the terms of the Buyout  
10 Agreement do not reference California and the dealings between Plaintiff and Exchange, not Roter,  
11 Dawson or BDB Capital, did not occur in California. Roter Decl. ¶ 14. Thus, Roter, Dawson and BDB  
12 Capital could not have contemplated future consequences for themselves in California.

13  
14 **2. Plaintiff’s Claims Against Roter, Dawson and BDB Capital Did Not Arise**  
**from California-Related Activities**

15 Plaintiff has not met the second prong of the specific-jurisdiction test because it has not shown  
16 that its claims against Roter, Dawson and BDB Capital arose from their California-related activities.  
17 Plaintiff must show that it “would not have been injured ‘but for’ [Roter, Dawson and BDB Capital’s]  
18 conduct directed toward [Plaintiff] in California.” *Panavision Int’l L.P. v. Toeppen*, 141 F.3d 1316, 1322  
19 (9<sup>th</sup> Cir. 1998). The ultimate inquiry under the second prong of the specific jurisdiction test is whether  
20 Plaintiff would have suffered harm but for “the contacts constituting purposeful availment.” *Bancroft &*  
21 *Masters*, 223 F.3d at 1088. As discussed above, however, Roter, Dawson and BDB Capital have not  
22 engaged in California-related activities – they do not sell or solicit sales within California or otherwise  
23 conduct business in the state. Roter Decl. ¶ 4; Dawson Decl. ¶¶ 4, 19. Simply stated, Roter, Dawson and  
24 BDB Capital have no contacts with California constituting purposeful availment.

25  
26 **3. The Exercise of Jurisdiction Over Roter, Dawson and BDB Capital Would Be**  
**Unreasonable**

27 As to the third prong of the specific jurisdiction test, exercise of personal jurisdiction under the instant  
28 facts and circumstances would be patently unreasonable. To be reasonable, jurisdiction must comport with “fair

1 play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). The *Burger King*  
2 Court set forth seven factors for determining whether the exercise of jurisdiction over a nonresident defendant is  
3 reasonable: (1) the extent of the defendant’s purposeful interjection into the forum state, (2) the burden on the  
4 defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant’s state,  
5 (4) the forum state’s interest in adjudicating the dispute, (5) the most efficient judicial resolution of the  
6 controversy, (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief, and (7)  
7 the existence of an alternative forum. *See* 471 U.S. at 476-77; *Bancroft & Masters*, 223 F.3d at 1088. No one  
8 factor is dispositive; all must be balanced and considered together. *See Core-Vent Corp. v. Nobel Indus. AB*, 11  
9 F.3d 1482, 1488 (9th Cir. 1993). Here, a balancing of all seven factors shows that the exercise of jurisdiction by  
10 this Court would fail to comply with proper notions of fair play and substantial justice.

11  
12 (a) Extent of Roter, Dawson and BDB Capital’s Purposeful Interjection into California

13 Even if a nonresident defendant’s contacts with the forum state are sufficient to meet the purposeful  
14 availment test, they may still be insufficient to satisfy the *Burger King* purposeful-interjection factor. *See*  
15 *id.* Further, “[t]he smaller the element of purposeful interjection, the less is jurisdiction to be anticipated and  
16 the less reasonable is its exercise.” *Insurance Co. of N. Am. v. Marina Santa Cruz*, 649 F.2d 1266, 1271  
17 (9th Cir. 1981); *see also Core-Vent*, 11 F.3d at 1488. Here, neither is present. Aside from its conclusory  
18 allegations that Roter, Dawson and BDB Capital’s conduct giving rise to the Complaint occurred in Contra  
19 Costa County, California, and that Messrs. Roter and Dawson do business in California, Plaintiff has failed  
20 to show that Roter, Dawson and BDB Capital’s contacts with California are anything but virtually  
21 nonexistent. As set forth above, Roter, Dawson and BDB Capital have no business dealings in California.  
22 Roter Decl. ¶ 4; Dawson Decl. ¶ 4, 18-19. Thus, this factor weighs heavily in favor of the Court abstaining  
23 from exercising jurisdiction over Roter, Dawson and BDB Capital.

24 (b) The Burden Upon Roter, Dawson and BDB Capital Defending in California

25 The second *Burger King* factor requires assessing the burden on the defendant in defending in the  
26 forum. Here, the burden is particularly acute for Mr. Roter, who is a citizen of Canada. Defending oneself  
27 in a foreign legal system imposes a substantial burden on an alien defendant. *See Asahi Metal Industry Co.*  
28 *v. Superior Court*, 480 U.S. 102, 114 (1987) (finding the burden on a defendant severe when commanded

1 by the Supreme Court of California to traverse the distance between the defendant's headquarters in Japan  
2 to Solano County, California). Moreover, the unique burdens placed upon a foreign defendant lend  
3 significant weight to this factor. *See id.* (maintaining "[t]he unique burdens placed upon one who must  
4 defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of  
5 stretching the long arm of personal jurisdiction over national borders."). These burdens are all the greater  
6 on a defendant that has few if any connections to the forum state. *Cf. Core-Vent*, 11 F.3d at 1488 (burden  
7 greater on defendant that has no connections to forum nation). Mr. Roter has no contacts, continuing or  
8 otherwise, with California. *See Roter Decl.* ¶ 17. As Colorado citizens with no contacts with California,  
9 Mr. Dawson and BDB Capital would similarly be burdened by having to defend themselves in California.  
10 Accordingly, this factor weighs heavily in Roter, Dawson and BDB Capital's favor as well.

11 (c) The Extent of the Conflict with a Foreign Sovereign

12 The third *Burger King* factor weighs the extent of the conflict with the sovereignty of the  
13 defendant's state. "Where the defendant is a resident of a foreign nation rather than a resident of another  
14 state within our federal system, the sovereignty barrier is 'higher.'" *Rocke v. Canadian Auto. Sport Club*,  
15 660 F.2d 395, 399 (9th Cir. 1981). Further, sovereignty concerns weigh more heavily the fewer  
16 relationships an alien defendant has with the United States and the forum state. *See Core-Vent*, 11 F.3d  
17 at 1489 (citing *Asahi*, 480 U.S. at 112-13). As set forth above, Mr. Roter has no California-based  
18 relationships. *Roter Decl.* ¶¶ 2, 4, 6-10. Moreover, Mr. Roter's residency in Canada "tends also to  
19 undermine the reasonableness of personal jurisdiction . . . ." *Rocke*, 660 F.2d at 399. Similarly, Mr.  
20 Dawson and BDB Capital have no California relationships either. *Dawson Decl.* ¶¶ 2, 4, 6-10, 17-19, 21-  
21 26. Thus, this third factor also weighs particularly in Roter, Dawson and BDB Capital's favor.

22 (d) California's Interest in Adjudicating the Dispute

23 It is recognized that California has a "strong interest in providing an effective means of redress for its  
24 residents [who are] tortiously injured." *Gordy v. Daily News L.P.*, 95 F.3d 829, 836 (9th Cir. 1996). Although  
25 Plaintiff has brought tort claims against Roter, Dawson and BDB Capital, this factor alone is not dispositive.  
26 *See Core-Vent*, 11 F.3d at 1488 (holding that despite California's interest in providing a forum to those who  
27 are injured in its state, that interest must give way when individual citizens of a foreign county lack  
28 connections to the United States and whose purposeful interjection into the forum state has been very limited).

1 (e) The Most Efficient Judicial Resolution of the Controversy

2 Evaluating the most efficient judicial resolution of the controversy requires looking “primarily at  
3 where the witnesses and the evidence are likely to be located.” *Core-Vent*, 11 F.3d at 1489. This factor  
4 weighs against California, as most of the witnesses and evidence are likely located outside of California.  
5 Plaintiffs admit the events alleged in the Complaint originated with “[a] small group of criminals in  
6 Florida.” Compl. ¶ 13. Plaintiff does not specify where Roter, Dawson and BDB Capital’s alleged  
7 misrepresentations and omissions occurred, but conclusorily alleges their conduct occurred in Contra Costa  
8 County. However, given that Roter, Dawson and BDB Capital are citizens of Canada and Colorado, with  
9 no contacts with California, most of the witnesses and evidence are located outside of California.

10 (f) The Availability of an Alternative Forum

11 The sixth *Burger King* factor asks whether an alternative forum exists. Colorado or Canada is  
12 available as an alternative forum. In the absence of any showing that Plaintiff would be precluded from  
13 suing outside of California, *see Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1201 (9th Cir. 1988),  
14 there is nothing that militates against Colorado or Canada as an alternative forum in which Plaintiff could  
15 sue Roter, Dawson and BDB Capital. “Doubtless [Plaintiff] would prefer not to, but that is not the test.”  
16 *Roth v. Garcia Marquez*, 942 F.2d 617, 625 (9th Cir. 1991). This factor, then, weighs in favor of the  
17 Roter, Dawson and BDB Capital.

18 (g) The Importance of California to Plaintiff’s Interest in Convenient and  
19 Effective Relief

20 The final factor is the importance of the forum to the plaintiff’s interest in convenient and  
21 effective relief. There can be little question that it would be more convenient to Plaintiff to litigate  
22 against all of the defendants in California; “no doctorate in astrophysics is required to deduce that trying  
23 a case where one lives is almost always a plaintiff’s preference.” *Roth*, 942 F.2d at 624. Thus, while this  
24 factor weighs in Plaintiff’s favor, “neither the Supreme Court nor [the Ninth Circuit] has given much  
25 weight to inconvenience to the plaintiff.” *Core-Vent*, 11 F.3d at 1490.

26 When balancing and considering all factors together, *see Core-Vent*, 11 F.3d at 1488, it becomes  
27 apparent that the exercise of personal jurisdiction over Roter, Dawson and BDB Capital here would be  
28 unreasonable. Accordingly, Roter, Dawson and BDB Capital’s motion to dismiss for lack of personal

jurisdiction should be granted.

**C. Mr. Roter Has Not Been Properly Served Under the Hague Convention**

Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service must be satisfied. *See Omni Capital Int'l Ltd. v. Rudol Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). "Service of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served." *Mississippi Publ'g Corp. v. Murphree*, 326 U.S. 438, 444-45 (1946). Service of process upon foreign individuals in a federal action is governed by Federal Rule of Civil Procedure 4(f). Service upon an individual in Canada may be obtained as authorized by the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents, of which Canada is a signatory. *See Fed. R. Civ. P. 4 note (Convention)*. The Hague Convention requires each country to set up a Central Authority which must effectuate service when it is provided with documents that comply with its rules. *BBK Tobacco & Foods LLP v. Juicy eJuice*, No. CV-13-00070-PHX-GMS, 2014 WL 1686842, \*3 (D. Ariz. April 29, 2014). Plaintiff has failed to file and serve documentation demonstrating it has complied with the Hague Convention. Therefore, Plaintiff has failed to comply with the exacting requirements of the Hague Convention and Rule 4. Accordingly, service of process must be quashed.

**V. CONCLUSION**

For the foregoing reasons, Roter, Dawson and BDB Capital respectfully request that the Court issue an order (1) dismissing the Complaint against them for lack of personal jurisdiction and (2) quashing service of process upon Defendant Roter.

DATED: January 20, 2015

GREENBERG TRAURIG, LLP

By /s/ William J. Goines

William J. Goines  
Amanda D. Donson

Attorneys for Defendants Liquid Capital Exchange, Inc.,  
BDB Capital, Inc. (d/b/a Liquid Capital of Colorado)  
(erroneously sued as Liquid Capital of Colorado), Sol  
Roter, an Individual, and Bruce Dawson, an Individual



# EXHIBIT A



July 8, 2011

Liquid Capital Exchange, Inc.  
5734 Yonge Street, Suite 400  
Toronto, Canada M2M 4E7

Via Facsimile

Attn: Mr. Sol Roter

Re: Nature's Own Pharmacy (the "Company")

Dear Sol:

To induce you to terminate your financing arrangements with Nature's Own Pharmacy as of July 13, 2011, (the "Termination Date"), and to terminate your security interest in the assets of the Company agree as follows:

1. We will pay to you the amount of \$275,000.00 to be credited by you against the obligations of the Company in your favor which amount represents the principal amount of such outstanding obligations plus accrued interest and fees thereon as of the Termination Date.
2. You hereby release, as of the Termination Date, all security interests and liens which have heretofore been granted to you by the Company. You agree to prepare, execute and deliver to us appropriate releases and termination statements to affect such releases which we shall file at our sole cost and expense.
3. You agree to remit to us any amounts which Nature's Own Pharmacy may be entitled to receive from you, from time to time, upon the adjustment of its account with you. Furthermore, you agree to remit to us any collections that you may subsequently receive on any of the Company's accounts for which payment may be made to you. In the event that any payment which is the subject of remittance by you to us hereunder is sought to be recovered by the payor or a representative thereof (including a trustee in bankruptcy or assignee for the benefit of creditors on the grounds of preference), then you shall promptly so advise us in writing.

A handwritten signature in dark ink, appearing to be "NR", is located in the bottom right corner of the page.

following which we shall have the exclusive right and obligation, at our sole cost and expense, to contest, defend or settle such claim.

4. Please complete this section for accurate transmittal of monies:

Bank name : Bank of America  
Routing/ABA Number : [REDACTED]  
Account Name to credit : Liquid Capital Exchange, Inc.  
Account Number to credit [REDACTED]

This agreement may be executed in counterparts. Each counterpart shall be deemed an original but all of which together shall constitute one and the same instrument. An executed facsimile of this agreement shall be deemed to be a valid and binding agreement between you and us.

If the above correctly sets forth your and our agreement, please execute the enclosed copy of this letter in the spaces provided below and return such fully executed copy to the undersigned as soon as possible.


Very truly yours,

CONSENTED AND AGREED TO  
This 13<sup>th</sup> day of July 2011.

Marble Bridge Funding Group, Inc.

By: \_\_\_\_\_  
Name: Tammy Mooney  
Title: Operations Analyst

Liquid Capital Exchange, Inc.

By:   
Title: PRESENT

**Nature's Own Pharmacy, LLC**  
a Limited Liability Company

By: \_\_\_\_\_  
Name: Richard Wallace  
Title: Managing member